

Webinar organised by the EU-Japan Centre for Industrial Cooperation, with DG GROW and METI

## SWITCHING ON A CIRCULAR FUTURE FOR BATTERIES IN EUROPE

~ What the EU regulation on batteries will mean for European and Japanese businesses ~

Wednesday, 31 January 2024 from 17:00 to 18:30 in Tokyo / 09:00 to 10:30 in Brussels

Yasuo Tanabe (MD – Japan-side, EU-Japan Centre) moderated the webinar<sup>1</sup>. Manuel Hubert (MD, EU-side, EU-Japan Centre) gave the opening remarks and Takahiro Yoshinari (Deputy Director, Battery Industries Office, METI) gave a statement. Cesar Santos Gil (Policy Officer, Waste Management & Secondary Materials Unit, DG Environment) and Ewout Deurwaarder (Policy Officer, Sustainable Industrial Policy / Batteries and Ecodesign, Green and Circular Economy Unit, DG GROW) gave the detailed [presentation](#) and responded to questions. 902 people took part in the meeting.

In their opening remarks, Messrs Tanabe and Hubert noted that EU [battery rules](#) are of great interest to Japanese industry, and that the webinar is being held in the context of the [EU-Japan Green Alliance](#)<sup>2</sup> by the EU-Japan Centre which provides a [wide range of services](#) to promote all forms of industrial cooperation.

Mr Yoshinari explained that this webinar was inspired by a request from METI to DG GROW. He noted that the regulation will be implemented gradually with the first milestone coming on 18 February 2024, when the European Commission is required to adopt the carbon footprint rules affecting EV batteries. He hoped that the Commission would take note of the high interest Japanese companies attach to this topic.

Mr Santos Gil from the European Commission's [DG Environment](#) gave the first six slides of the [presentation](#):

The [Batteries Regulation](#) (EU) 2023/1542 on batteries and waste batteries will gradually replace the existing [Batteries Directive](#) and will add two extra categories of battery to be covered by the rules:

- *Portable battery category* (<5 kg, sealed batteries, not for industrial use but for everyday use, e.g., AAA, 9V, etc).
- *Starter, lighting and ignition (SLI) batteries* (an expanded remit but excludes traction batteries, which have their own category).
- *Light means of transport (LMT) batteries* is the first new category.
- *Electric vehicle (EV) batteries* is the other new category and covers batteries >25 kg (no upper limit) to power wheeled vehicles in EU vehicle categories “M”, “N” and “O”<sup>3</sup>.
- *Industrial battery category* (e.g. energy and external storage, or batteries not covered by other categories).

This distinction is important because over time different rules will apply for the categories. If a battery can fall under more than one category the category with the strictest set of rules will apply. So manufacturers should make careful decisions about the categorisation of the batteries they place on the market.

The new rules will cover the whole life cycle of the battery:

- *Responsible sourcing* – due diligence to address the sources of cobalt, natural graphite, lithium and nickel.
- *Battery manufacturing* – the process should minimise carbon intensity and over time minimum thresholds for deriving some content from recycling will be set for lithium, cobalt, nickel and lead.
- *Use phase and durability* – legal obligations to ensure a second lease of life (via repurposing, remanufacturing, preparation for reuse of a waste battery, and preparation for repurposing from a waste battery).
- *Collection targets for end-of-life* – assumption that *all* industrial and EV batteries will be collected with minimum targets to be set for collection and recovery of materials of portable and LMI batteries when they become waste batteries.

The Regulation sets requirements for placing batteries ‘on the market’. These include battery design rules, restrictions on the use of hazardous substances, ensuring performance and durability and ensuring safety for batteries not regulated by

<sup>1</sup> [English](#) and [Japanese](#) versions of the webinar’s webpage are available. A [recording](#) of the webinar will be available until late July 2024

<sup>2</sup> See [https://climate.ec.europa.eu/news-your-voice/news/eu-and-japan-commit-new-green-alliance-work-towards-climate-neutrality-2021-05-27\\_en](https://climate.ec.europa.eu/news-your-voice/news/eu-and-japan-commit-new-green-alliance-work-towards-climate-neutrality-2021-05-27_en)

<sup>3</sup> M = “Power-driven vehicles having at least four wheels and used for the carriage of passengers”, N = “Power-driven vehicles having at least four wheels and used for the carriage of goods”, O = “Trailers”. Source: <https://alternative-fuels-observatory.ec.europa.eu/general-information/vehicle-types>

other EU regulations (i.e., energy storage systems). Battery production rules will address carbon footprint and recycled content. Battery information requirements on the battery themselves will address markings, packaging for small batteries, QR codes for secondary information<sup>4</sup>. These are separate from the due diligence requirements on the economic operator.

To address end-of-life management, the battery producer must register in the 'register of producers'<sup>5</sup> in every member-state in which it places batteries for the first time (i.e., it cannot use a registration in one member-state to place a battery in another member-state). The extended producer obligations fall on the producer – they must obtain a certain minimum rate of collection of waste batteries; recyclers ensure recycling efficiencies and material recovery. Technical details will be addressed by an implementing act which is under preparation. Should an EV battery get a second life as part of an energy storage solution, two or more economic operators who will therefore share the extended producer responsibility obligations.

[Article 11](#) deals with the “Removability and replaceability of portable batteries and LMT batteries”. As a general principle, end-users should be able to remove and replace portable batteries at any time during the life of the device. This is to increase the harvesting of waste batteries to raise their collection rates and to prevent electrical appliances becoming prematurely obsolete because a battery cannot be easily replaced. Some exemptions: electrical appliances that are used in wet surroundings (toothbrushes, shavers) or some professional medical devices have a derogation from this requirement and their batteries only need to be removable / replaceable by an independent professional, not the end user. The EC can add other categories to that list of derogations. LMT batteries should be removable / replaceable by an independent professional. Cells should be individually removable – if an e-bike has a 4-cell battery pack and only one cell is defective only it needs to be changed. Later in 2024 the EC will publish guidance on the application of Article 11 based on a [JRC report](#)<sup>6</sup> on the replaceability of batteries.

*Mr Deurwaarder from the European Commission's [DG GROW](#) gave from slide 7 of the [presentation](#) onwards:*

The 18 February 2024 application date of the legislation will have few immediate consequences for industry apart from in relation to Articles 6, 12(1) and 13(5)<sup>7</sup>. No specific conformity assessment procedures are being introduced at that date. From 18 August 2024, more requirements will apply including [Article 14](#) on information in the battery management system, conformity assessments and the placing of CE marks to show conformity (can be done by the manufacturer – no need to involve a third party or Notified Body at this date). Importers and distributors will also have obligations from this date.

The EC aims to publish a *draft* act in February to develop methodology on the calculation of carbon footprints of electric vehicle batteries with a 4-week stakeholder feedback period via the [Have your say](#) web portal and a 60-day [WTO/TBT notification](#). The final delegated act should be published in the second half of 2024, the carbon footprint declaration will apply a year later and will require the involvement of Notified Bodies<sup>8</sup> listed on the [NANDO](#) website (which would be postponed should the list of Notified Bodies not be in place a year in advance). Comparative labelling and establishing threshold levels for batteries to enter the EU market will follow later. Work has begun for industrial batteries.

Battery passports will apply from 2027. The technical operation of the passports is being developed jointly with the digital product passport<sup>9</sup> with the input from standardisation bodies. On access rights – some information will be public, some will be restricted to certain operators (e.g., for recycling and end-of-life) to be defined in implementing legislation, some will be for the EU Authorities. A small amendment will require a battery's identifier to be uploaded to a central register<sup>10</sup>.

On due diligence, the Regulation is ready and is modelled on OECD work and has to be applied from mid-2025. The EC expects to publish guidance and the assessment framework in early 2025. Should a battery not contain any of the minerals listed in [Annex X](#), the due diligence requirements will not apply. Similarly, economic operators that place batteries on the

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<sup>4</sup> See [Annex XIII](#) for “information to be included in the battery passport”

<sup>5</sup> [Article 55](#) deals with the “Register of producers”

<sup>6</sup> On “Technical input for the Guidelines on removability and replaceability of portable and Light Means of Transport batteries”

<sup>7</sup> [Article 6](#) = “Restrictions on substances”, [Article 12](#) = “Grounds for refusal of European Production Orders”, [Article 13](#) = “Labelling and marking of batteries”

<sup>8</sup> [Chapter V](#) deals with the “Notification of conformity assessment bodies”

<sup>9</sup> [A webinar](#) on the “Digital Product Passport initiative” was organised on 12 June 2023. [Documents from that webinar](#) are available.

<sup>10</sup> Under [Article 70a](#) of the (draft) Regulation on Ecodesign for Sustainable Products

EU market and that have a *global* turnover <€40m (general turnover, not battery-specific) will not have to meet due diligence requirements for minerals.

[Chapter VI](#) defines the obligations of economic operators. The ‘manufacturer’ will be the economic operator who *finishes* the battery. That would be a car manufacturer if it completed the battery rather than simply installing an already complete battery supplied by another economic operator. The [Blue Guide](#) defines many terms such as when something is considered as placed on the market or who a manufacturer is. The general rule is that where something is manufactured in the EU it is the manufacturer who places it on the market, otherwise it is the importer when it is manufactured outside the EU. Although the due diligence and battery passport requirements are the responsibility of the economic operator who places a battery on the EU market, that economic operator concerned can involve other parties if needed. [Recital \(11\)](#) address batteries stocked in warehouses.

On documentation, technical documents will only be available to notified bodies and authorities. It will often include confidential information on the compliance of the product. In certain circumstances, documents need to physically accompany the product (rather than being available via a QR code): when the term “affix” is used, or it concerns an exception to a marking that would normally be required, or it concerns instructions / safety, or the Regulation requires it.

During the Q&A part of the briefing, topics covered included:

- *Batteries have many components and parts. Will suppliers of parts and components have any obligations under the new Regulation?* If the battery needs completion, the economic operator who puts the battery together and makes it available for final distribution will be responsible for the battery. The goal is to ensure that an economic operator takes responsibility for a battery placed on the EU market.
- *Will the EV category of batteries include hybrid vehicles? What about fuel cell batteries?* Fuel cell batteries will not be covered by the Battery Regulation as they have a different electrochemical function. For hybrid vehicles it depends on a case-by-case basis – for example, plug-in hybrids will be covered, others may not be.
- *When is something ‘placed on the market’ – e.g., when it is ready for sale / a sales contract is signed / the battery is delivered based on a sales contract?* For EU-based battery manufacturers, a battery will be placed on the market when it moves from the factory to a sales division or to another company for onward sale. Imported batteries or imported appliances with batteries in them will be considered ‘placed on the market’ when a custom releases them for free circulation. If an EU consumer buys something online and it is shipped directly to them, the ‘placing’ will occur when the item is sold. See the Blue Guide for more information.
- *On extended producer responsibilities – who is responsible between a battery producer and a manufacturer of a product that incorporates a battery? Will the manufacturer of an EV have to collect the EV after use and return the battery to its ‘manufacturer’ for recycling?* [Chapter VIII](#) addresses the management of waste batteries and allows producers to establish collection schemes to handle battery treatment and waste.
- *Do EV manufacturers need to cooperate with each other?* Once an EV battery becomes waste in a member-state, there is an obligation to collect and recycle it in that member-state. Cooperation is assumed.
- *Given that different parts of the rules have different start dates when should affected companies start preparing to meet their obligations?* Once the EC publishes its *draft* calculation methodology, it would make sense for affected companies to start work then, but they should check the *final* rules when they are published later this year. One year after publication of the list of Notified Bodies, battery manufacturers must go to the Notified Body for carbon footprint aspects. Notified bodies are also required for due diligence and recycled content; manufacturers can choose to consult the Notified Body on other aspects.
- *The consultation deadline is 4 weeks for public comments and 60 days for the WTO/TBT consultation. Can the public consultation be extended, or will companies be able to react via their governments through the WTO/TBT process? When will these periods start?* The 4-week window is the EU’s standard period for delegated acts. Earlier feedback

rounds were held on carbon footprint. WTO/TBT consultations last longer. It is for WTO members to decide how they provide feedback and whether that can include industry. The start date is when the notification occurs.

- *Would reading the JRC report allow people to guess the contents of the delegated act?* No. The final delegated act will also include other feedback that has been received for example on how to account for electricity from the grid. So rather than focusing on the JRC report, wait for the draft delegated act.
- *Can assumed / benchmarked data be used for the carbon footprint measurement or is an actual measurement needed?* Not possible to answer that at this stage. This will be defined in the delegated act.
- *Could a Japanese entity become a Notified Body, for example under mutual recognition principles?* Notified Bodies need to be established in an EU Member-State but could subcontract and involve a Japanese entity. In principle, a G2G mutual agreement could allow a Japanese Notified Body, but this is currently not foreseen for batteries.
- *Will the battery passport and digital product passport rules be the same?* The rules will be similar, but not identical. Technically they will operate in the same way. There will not be a central database but a decentralised system.
- *Who will be able to access information supplied for battery passports?* There will be four kinds of information: public, (confidential information) for Notified Bodies and Authorities, information for recyclers and information for battery users.
- *Due diligence requirements will cover cobalt, natural graphite, lithium and nickel. Could this list be expanded? Why were these four minerals chosen – is it to ensure economic security and avoid over-reliance on certain countries or to address human rights concerns?* Additional minerals could be added to the list if risks related to chemistries are identified and become significant like these four. The list deals with risks associated with certain minerals that are used in batteries in big quantities. Copper is not included because 99% of global copper is not used in batteries. There are two main sources for due diligence requirements – [OECD Due Diligence Guidelines](#) and existing EU legislation covering, for example, conflict minerals like tungsten. The emphasis on environmental rather than human rights factors is new.
- *What happens in the event of non-compliance? Will producers need to recall violating batteries or lose access to the market?* On some aspects, getting approval by a Notified Body will be required. [Market surveillance authorities](#) will do risk-based checks and will contact the manufacturer to ensure compliance. The market surveillance authority can also decide to impose a penalty (be it immediate or deferred) or to have the product withdrawn from the market. This decision is likely to depend upon the seriousness of the issue and the manufacturer's cooperation with any inquiry.
- *Is there going to be a website or contact point to which questions can be sent, or will FAQ be developed?* No helpdesk as such, but there are the general assistance services of [Your Europe](#). The Blue Guide and other sources referred to earlier can also be consulted. It has not yet been decided whether FAQ will be available given that the EC is hesitant to provide interpretations as the EU Court of Justice alone can interpret EU legislation.
- *How will black mass be handled? Will nickel and cobalt need to be extracted?* It is not yet clear how black mass<sup>11</sup> will be handled in relation to recycling. A revision of the EU list of wastes is underway to harmonise treatment, it is likely that black mass will be declared a hazardous substance.
- *When an item is being repaired and needs a spare part / battery will it need a CE mark and a battery passport?* The regulation does not mention repairs but addresses 'remanufacturing'. Remanufactured batteries will need to be reassessed for conformity within reason (there is an obligation that smaller portable batteries are kept as spare parts to facilitate the repair of an appliance, not the repair of the batteries themselves).

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<sup>11</sup> "Black mass is a residue of the Li-ion spent batteries (LIB) composed by Cobalt, Nickel, Manganese, Copper, Lithium, Iron and Carbonates, currently disposed as special waste for the lack of cost-competitive metals recovery technologies." Source: 'project objective' part of <https://cordis.europa.eu/project/id/863431>

- *Are the percentages of minerals that need to be recycled fixed?* The percentages are based on economic modelling by the JRC and take into account expected availabilities over the next 10 to 15 years. The EC will have some flexibility to revise the percentages up or down if the market does not develop as expected.

Disclaimer: *Please note that the above remarks only reflect the opinion of the Commission services and are not legally binding. A finally binding legal interpretation of EU legislation may only be provided by the European Court of Justice. The above remarks are without prejudice to the position the Commission might take should the issue arise in a procedure before the Court of Justice.*